

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2004-0191, In the Matter of Susan Ainslie and Carlos Ainslie, the court on January 13, 2005, issued the following order:

The petitioner, Susan Ainslie (mother), appeals a decision of the trial court modifying custody of the parties' daughter. She argues that there was insufficient evidence to support the trial court's finding that a strong possibility of harm existed for her daughter if she continued to live with her. We affirm.

The trial court may modify a permanent custody order if it finds that the "circumstances affecting the welfare of the child have been so greatly altered that there is a strong possibility that the child will be harmed if the child continues to live under the present arrangement." RSA 458:17 (Supp. 2003) (amended 2004).

The court has wide discretion in this matter and we will not disturb its determination if it could reasonably be made. Matthews v. Matthews, 142 N.H. 733, 735 (1998). The master's factual determinations are binding upon this court unless they are unsupported by the evidence. *Id.*

The parties' child was nine years old at the time the petition to modify was filed; the petition was based upon allegations of both abuse and neglect. The record includes evidence that the mother worked the third shift and that the child was transported at ten o'clock at night to the homes of care providers to enable her mother to work. The evidence also included that when the mother was not awake when her daughter returned from school, the daughter was afraid to make noise that might wake, and, therefore, anger, her mother and that the child was responsible for preparing her own meals when the mother was sleeping. Although the mother obtained employment on the first shift at some time after the final hearing was held on the petition to modify custody, the master found that the mother was not addressing the child's needs even when she was home and that a strong possibility of harm existed if custody was not modified. Because the record supports the master's findings, we affirm.

Affirmed.

BRODERICK, C.J., and DALIANIS and DUGGAN, JJ., concurred.

**Eileen Fox
Clerk**

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